IN THE HIGH COURT OF JUDICATURE AT BOBBY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4507 OF 2005

Balraje @ Vikrant Rajan Patil ...Applicant

Vs.

The State of Maharashtra ...Respondent

Shri. V.R. Manohar, Senior Counsel i/by Shri. V.M. Thorat for the Applicant.
Shri. R.Y. Mirza, A.P.P. for the Respondent.
Shri. B.D. Joshi i/by Shri. S.S. Salunkhe for the Complainant.

WITH
CRIMINAL APPLICATION NO.4508 OF 2005

1. Rajendra Bhagirat Gund
2. Popat Nagnath Urane
3. Madhukar Dagdu Mali ...Applicants

Vs.

The State of Maharashtra ...Respondent

Shri. A.P.Mundargi, Senior Counsel i/by Mrs. Kanchan S. Kambli for the Applicants.
Shri. K.V.Saste, A.P.P. for the Respondent.
Shri. B.D.Joshi i/by Shri. S.S. Salunkhe for the Complainant.

AND
CRIMINAL APPLICATION NO.4509 OF 2005

1. Bapu Chandu Ugade
2. Maruti Tukaram Ugade ...Applicants

Vs.

The State of Maharashtra ...Respondent

Shri. V.M. Thorat i/by Shri. D.V. Sutar for the Applicants.
Shri. R.Y. Mirza, A.P.P. for the Respondent.
Shri. B.D. Joshi i/by Shri. S.S. Salunkhe for the Complainant.

CORAM : A. S. OKA, J.
DATE : AUGUST 26, 2005.

P.C.:

1. These three Bail Applications arise out of the same offence and therefore, can be conveniently disposed of by passing a common order. I have extensively heard Shri. V.R. Manohar, learned Senior Counsel appearing for the Applicant in Criminal Application No.4507 of 2005. I have heard Shri. Mundargi, learned Senior Counsel appearing for the

Applicants in Criminal Application No.4508 of 2005 and Shri. V.M. Thorat, learned Counsel appearing for the Applicants in Criminal Application No.4509 of 2005.

2. The Bail Applications arise out of C.R.No.95 of 2005 registered with Mohol Police Station, District Solapur against the Applicants for the offences punishable under sections 364, 302, 147, 148, 149, 323, 504 and 506 of the Indian Penal Code read with Section 135 of the Bombay Police Act. The allegation of the prosecution is that at about 04.30 p.m. on 05th April, 2005, the deceased Pandit who is stated to be a leader of a political party-Shiv Sena was forcibly picked up by the accused from his shop in one of the two vehicles brought by the accused persons and was taken to a spot near 'Hazare Vasti'. The allegation is that two brothers of the deceased chased the two vehicles on a motorcycle. On the way to the said spot, he was beaten and assaulted in the vehicle. The vehicles were stopped near the 'Hazare Vasti'. The allegation is that at the scene of offence, the deceased Pandit was assaulted by the accused with iron rod, belt, a chain and sticks. The case is that after the deceased became motionless, the accused persons left the spot in their vehicles. The complainant Sanjay is a real brother of the deceased. The case of the prosecution is that Sanjay and his brother Padmakar pleaded with the accused not to assault the

deceased but, the intervention was of no help. From the scene of the offence, the deceased was carried to Civil Hospital where he was pronounced dead and the brothers of the deceased took the dead body alongwith other villagers to the Police Station for registering the offence.

3. In so far as the Applicant in Criminal Application No.4507 of 2005, namely, Balraje @ Vikrant is concerned, he applied for Anticipatory Bail which was rejected on 26th April, 2005 by the Sessions Court. Application for Anticipatory Bail made by the Applicant in this Court was withdrawn and he was granted time by this Court to surrender before the Investigating Officer till 17th May, 2005 and accordingly, he surrendered on 17th May, 2005.

4. In so far as the Applicants in Criminal Application No.4508 of 2005 are concerned, they were arrested on 06th April, 2005. The Applicants in Criminal Application No.4509 of 2005 were also arrested on 06th April, 2005. There is no dispute between the Counsel appearing for the parties that when Applications for grant of bail were filed by the Applicants in the Sessions Court, chargesheet was not filed but, at the time of hearing of the Bail Applications, the parties relied upon all the documents which were produced alongwith the

chargesheet. By order dated 07th July, 2005 the Applications made by the present Applicants were rejected by the learned Ist Ad-hoc Additional Sessions Judge.

5. Shri. Manohar, learned Senior Counsel appearing for the Applicant in Criminal Application No.4507 of 2005 has taken me through the statements of various witnesses , F.I.R. etc. He submitted that there is an unexplained gross delay in lodging the F.I.R. He pointed out that the Station Diary of the Police Station shows that brother of a deceased had informed the Mohol Police Station on telephone at 04.25 p.m. about the fact that the deceased was forcibly taken away by certain people from his shop at Mohol. The entry at 04.35 p.m. in the Station Diary shows that the Police Officer Bandgar and other staff members had left for the spot. He pointed out that the dead body was brought to the Police Station at 06.15 p.m. He pointed out that, thereafter, the inquest panchnama was recorded upto 10.15 in night and the F.I.R. was registered at 11.00 p.m. He submitted that real brothers of the deceased were at the Police Station from 06.15 p.m. He pointed out that the Applicant in the said Applicant happens to be a son of local M.L.A. The father of the said Applicant is a leader of a ruling party NCP which is a rival party of the Shivsena party of which the deceased was a leader.

He submitted that there is no explanation as to why offence was not registered from 04.30 p.m. till 11.00 p.m. He stated that the Applicant was deliberately implicated. Shri. Manohar further submitted that there is no recovery made at the instance of the Applicant Balraje. He submitted that none of the fifty one injuries on the person of the deceased are grievous injuries. He pointed out that the cause of death as reflected from the Post Mortem Notes is laceration of the liver which is not caused by any of the fifty one injuries. He submitted that even taking the prosecution case as true, at highest second part of Section 304 of the Indian Penal Code will apply, if not the Section 325 of the Indian Penal Code. He submitted that even going by the prosecution story, there was no intention on the part of the accused to kill the deceased.

6. He submitted that the prosecution has not recorded the statement of the brother of the deceased who has allegedly reported the incident to the Police Station at 04.25 p.m. on that day. He also invited my attention to the fact that the statements of all the material witnesses were recorded belatedly on 12th April, 2005. He also pointed out the entries made in the Station Diary to show that on 08th April, 2005 the witnesses Bajrang Jadhav and the brother of the deceased Padmakar were very much available. He

submitted that there is absolutely no explanation for gross delay in recording the statements of the relevant witnesses.

7. He submitted that the Applicant Balraje is a young student aged twenty years and is a bonafide student of a college. He submitted that no purpose will be served in detaining him after investigation is complete. He stated that the Applicant is ready and willing to stay away from the town Mohol till the conclusion of the trial. He has also placed reliance on the several decisions of the Apex Court. A reference to the said decisions will be made at a later stage.

8. Shri. Mundargi, learned Senior Counsel appearing for the Applicants in the Criminal Application No.4508 of 2005 has generally adopted submissions of Shri. Manohar. He has pointed out the improvements made by the prosecution while recording the supplementary statements of the witnesses. He also pointed out that though the inquest panchnama is recorded fourty five minutes prior to the registration of the F.I.R., curiously, crime number of the F.I.R. finds place in the inquest panchnama.

9. Shri. Thorat, learned Counsel appearing for the Applicants in Criminal Application No.4509 of 2005

submitted that the Applicants in the said Application have been falsely implicated. He pointed out that the names of the said Applicants do not find place in the F.I.R. lodged by the brother of the deceased. He pointed out that the names of the said Applicants appear in the second supplementary statements of certain witnesses which are recorded more than two and half months after the incident. He submitted that there is no recovery made at the instance of the said Applicants and there is no material against them save and except the supplementary statements, and therefore, they are entitled to be enlarged on bail.

10. I have heard Shri. Mirza, learned A.P.P. appearing for the State in Criminal Application Nos.4507 of 2005 and 4509 and 2005. He has relied upon the material available against the Applicants. He pointed out that there is a clear explanation for delay in registering the F.I.R. He submitted that all the witnesses have ascribed the major role to the Applicant Balraje in Application No.4507 of 2005 in an offence of brutal nature. He submitted that the Applicant Balraje was protected under the orders of the Court passed in the Anticipatory Bail Applications filed by him and he surrendered on 17th May, 2005 persuant to the direction given by this Court. He pointed out that the said Applicant surrendered one and half month after the offence and that is the

reason why no recovery is made at his instance. The weapon used by him was by that time already recovered. He submitted that one more offence has been registered against the Applicant making serious allegations against the Applicant Balraje in Criminal Application No.4507 of 2005. In so far as the Applicants in Criminal Application No.4509 of 2005 are concerned, he stated that there is no recovery made at their instance He further submitted that the witnesses have clearly ascribed a clear role to the said Applicants.

11. Shri. Saste, learned A.P.P. appearing for the State in Criminal Application No.4508 of 2005 has invited my attention to the relevant statements of the witnesses and recovery of the weapons of assault made at the instance of the Applicants.

12. I have heard Shri. B.D. Joshi, learned Counsel appearing for the original Complainant. Shri. Joshi relied upon statements of various witnesses. He invited my attention to the Post Mortem Notes. He pointed out that as the Applicant in Criminal Application No.4507 of 2005 happens to be the son of M.L.A. belonging to the ruling party, one of the Officers of the Police Department was responsible for delay in initiating action. He invited my attention to the statements of a Police Officer Shri. Bandgar. He has placed reliance on various decisions of the

Apex Court, a reference to which is made at later stage.

13. Before I deal with the submissions made by the Counsel appearing for the parties, I will have to refer to the various decisions relied upon by Shri. Manohar, learned Senior Counsel appearing for the Applicant and the other learned Counsel appearing for the parties. Shri. Manohar placed reliance on the decision of the Apex Court reported in **1994 Criminal Law Journal 280 (State of Gujarat Vs. Patel Mohan Mulji and Anr.).** He placed reliance on decision of the Supreme Court in the case of **Ram Govind Upadhyay Vs. Sudarshan Singh reported in AIR 2002 Supreme Court 1475** and pointed out that the Apex Court has held that frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail. He has also invited my attention to decision of the Supreme Court reported in **(2005) 2 Supreme Court Cases 42 (Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and another).** The Apex Court has taken a view that while deciding the cases on facts, more so in criminal cases, that each case must rest on its own facts and similarity of facts in

one case cannot be used to bear in mind the conclusion of fact in another case. Shri. Manohar also placed reliance on another decision of the Supreme Court reported in **2001 Criminal Law Journal 3299 (Chavda Jivanji Chelaji & Ors. Vs. State of Gujarat)** and submitted that in the present case even going by the case of the prosecution, it is impossible to bring the offence within the perview of clause "thirdly" of Section 300 of the Indian Penal Code. He also placed reliance on recent decision of the Apex Court reported in **AIR 2005 Supreme Court 716 (Jayendra Saraswathi Swamigal Vs. State of Tamil Nadu)**. He pointed out that the said decision has explained the decision of the Apex Court in the case of Kalyan Chandra Sarkar Vs. Papu Yadav reported in (2004) 7 Supreme Court Cases Page 528. He also urged on the basis of a decision of the Supreme Court reported in 1993 Criminal Law Journal Page 426 (Nadodi Jayaraman Vs. State of Tamil Nadu and Others) that merely because there are large number of injuries shown to have been sustained by the deceased, that by itself will not attract provisions of Section 302 of the Indian Penal Code. He submitted that there was no intention of causing death or even causing such a bodily injury as was likely to cause death.

14. Shri. Joshi appearing for the complainant has placed for perusal a decision of the Apex Court

reported in **1991 Criminal Law Journal Page 1945 (State of Maharashtra Vs. Anand Chintaman Dighe).** He submitted that the investigation shows that a mafia type terror was created by the principle accused Balraje and therefore, Applicants are not entitled to bail. Lastly, he placed reliance on the decision of the Apex Court reported in **2003 Supreme Court Cases (Cri.) 351 (State of U.P. Vs. Jagdeo and Others)** and submitted that the Apex Court has held that mere faulty investigation cannot be ground for acquittal of the accused and for the fault of the prosecution, the perpetrators of a ghastly crime cannot be allowed to go scot-free.

15. While deciding the Applications for bail, what will have to be considered by the court is the nature and seriousness of the offence, the character of evidence, the circumstances which are peculiar to the accused, reasonable apprehension of witnesses being tampered with, larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.

16. As stated earlier, the Criminal Application No.4507 of 2005 is by the accused No.1 Balraje, Criminal Application No.4508 of 2005 is by the three other accused Rajendra, Popat and Madhukar and the last Criminal Application namely 4509 of 2005 is of

remaining two accused Bapu and Maruti. Perusal of the statements recorded by the police during investigation shows that the witnesses are very consistent in ascribing a specific role to the Applicants Bal Raje, Rajendra, Popat and Madhukar. Balraje and three other named accused picked up the deceased in a vehicle from his shop in a market. The brother of the deceased followed the two vehicles of the accused. There is a statement of a witness who is not related to the accused, who has seen Balraje sitting in the vehicle alongwith the deceased and the witness has stated that the deceased was screaming in the vehicle. The witnesses are also consistent about the fact that vehicle stopped near Hazare Vasti. The deceased was taken out having no clothes on his person. The role ascribed to Balraje is that he assaulted the deceased by iron rod and Rajendra used a chain. It is alleged that the other two accused namely Popat and Madhukar had belt and sticks and all of them assaulted the deceased. The two brothers of the deceased who reached there tried to intervene and requested the accused not to assault their brother. However, the request had no effect. Sanjay lodged the F.I.R. on the day of incident and narrated the manner in which the assault was committed by the said four accused persons. Padmakar, another brother of the deceased has also set out the role played by the said four accused persons. Bajrang Jadhav who claims to be a

partner of deceased has stated that the aforesaid four accused and two others came to the shop of the deceased at 04.30 p.m. in the afternoon. They picked up the deceased in the vehicles brought by them. The said witness informed Sanjay, first informant and another brother of the deceased about the said fact. Another witness Sunil Gaikwad whose statement is also recorded on 12th April, 2005 stated that he saw the vehicles in which the deceased was being taken. According to him, the Accused No.1 Balraje was sitting next to the driver of the vehicle which was carrying the deceased and the deceased was screaming for help. He also stated that brothers of deceased Sanjay and Padmakar were following the vehicles on a motorcycle. The witness Ramdas Kshirsagar whose statement is recorded on 12th April, 2005 has also ascribed clear role to Balraje, Rajendra, Popat and Madhukar in the assault by using iron rod, chain, belt and sticks. The witnesses are very consistent about the prosecution case in so far as the said four accused are concerned.

17. The vehicles which were allegedly used for kidnapping the deceased were seized by the police on 09th April, 2005 and in one of the vehicles bloodstains were found. There is an evidence of recovery of sticks at the instance of accused Popat. There is evidence of recovery of belt at the instance

of accused Madhukar and at the instance of Rajendra, a cycle chain having length of fourty one inches and iron rod has been recovered. A statement of one Digambar who was working as a driver of the vehicle which was taken by the accused Madhukar at the instance of accused Balraje is also recorded. He has stated that as the vehicle was required by accused Balraje, he handed over the same to the accused Madhukar.

18. In so far as the aspect of delay is concerned, it is to be noted here that the extract of Station Diary produced itself records that the brothers of the deceased and the other villagers gathered near Police Station at 06.15 p.m. and they brought the dead body of the deceased to the Police Station and there was a riot not only at Police Station but also in the town. At 4.30 p.m. the deceased was allegedly lifted from his shop at Mohol and was taken near Hazare Vasti. After the assault dead body was taken to a Government dispensary and from there, the body was brought to the Police Station. A reference will have to be made to the statement of Mujib Karjatkar, Assistant Commissioner of Police. He has set out that the large mob gathered outside the Police Station when dead body of the deceased was brought to the Police Station and number of shops in the Mohol were burnt. He stated that number of political leaders arrived at the Police

Station. He has set out the manner in which recording inquest and F.I.R. was done in the Police Station. Though the said statement is belatedly recorded on 28th June, 2005, in so far as incident in the Police Station is concerned, entry has been made in the Station Diary which shows what transpired at the Police Station after the dead body of the deceased was brought there. The mob present there displayed its anger against a Police Officer Bandgar. Additional force was required to be called for. There are statements of the independent witnesses like Usman Tamboli which is recorded on 07th April, 2005 which record that there was a riot in the Mohol town. The events which took place at the Police Station appear to be the cause of delay. It cannot be forgotten that the Applicant Balraje happens to be a son of a sitting M.L.A. of a party in power and the deceased was a leader of a rival political group Shivsena. Therefore, there appear to be an explanation for delay in recording F.I.R.

19. In so far as delay in recording the statements is concerned, Shri. Manohar has invited my attention to the entries in the Station Diary dated 08th April, 2005. First entry also records that there was law and order situation created in the Mohol town and the police force was dealing with the said situation. The statements of the material witnesses have been

recorded on 12th April, 2005. As the supplementary statements are recorded belatedly, Therefore, I have made reference only to the original statements recorded on 12th April, 2005. The other aspect of delay is that the F.I.R. was forwarded to the Court twelve to thirteen days thereafter. This delay can always be explained by the prosecution at the time of trial. In the facts of this case, this delay by itself cannot be a ground for favourably considering the Application for Bail.

20. There are as many as fifty-one injuries on the different parts of the body of the deceased. The cause of the death is injury to vital organ liver. As pointed out by Shri. Manohar, there are no injuries above the shoulders. However, the Medical Officer has also opined that all injuries were collectively sufficient, in ordinary course, to cause death. The Post Mortem Notes also reflect that there is a laceration over the liver. The submission was made that it is difficult to connect any of the fifty one injuries mentioned in column No.17 of the Post Mortem Notes to the laceration to liver. However, this is a matter for evidence of the Doctors. The fact remains that the case of the prosecution is that, in broad light at 04.30 p.m., the deceased was picked up from his shop in a market in Mohol town and he was taken away and was brutally assaulted which has resulted in

having fifty-one injuries all over his body. There is more than enough prima facie material on record to show complicity of the Applicants Balraje, Rajendra, Popat and Madhukar in an offence of a brutal nature.

21. In so far as the Applicants in third Criminal Application are concerned, it is pertinent to note that both the brothers of the deceased have not named them. Their names appear for the first time in the second supplementary statements recorded of the three witnesses and that too, two months after the date of incident. Admittedly, there is no recovery made at the instance of the said two Applicants. The fact that there is no recovery made at the instance of the principle accused Balraje, may not be of any significance as it is case of the prosecution that after the offence, he was absconding and only after his Application for Anticipatory Bail was withdrawn, persuant to the direction given by this court, he surrendered on 17th May, 2005. However, lack of any recovery at the instance of the Applicants in Criminal Application No.4509 of 2005 is very significant on the background of the fact that their names were mentioned by the witnesses for the first time in the last week of June, 2005 in supplementary statements.

22. This is a case where, in broad day light at 04.30 in the afternoon, the four accused who are the

Applicants in first two Applications, came in vehicles to the shop of the deceased and the deceased was picked up and he was taken away. He was asssaulted resulting in fifty-one injuries on his person. The nature of the offence and the manner in which the offence has been committed and the fact that the Applicant Balraje could not be arrested immediately, are the factors which are required to be considered. In so far as the said Applicant Balraje is concerned, it is to be noted here that in the affidavit filed in this Court of the first informant Sanjay, it is stated that in Application for Anticipatory Bail a plea of alibi was raised by the Applicant by placing reliance on the medical certificate issued by Chintamani hospital. It is stated in the said affidavit that medical practitioner who issued the said certificate has filed a complaint in local police station making grievance that the said certificate was obtained under a threat. An affidavit is also made to that effect by the doctor. Another F.I.R. has been lodged after the present F.I.R. making serious allegation against the Applicant Balraje and others about commission of another offence under sections 325, 147, 148, 149, 504 and 323 of the Indian Penal Code. Looking to the gravity of offence and the consistent version of the witnesses about the prominent role played by the Applicant Balraje, the young age of the Applicant and the fact that he is a student is no ground to enlarge

him on bail. In so far as three Applicants in second Application are concerned, as in case of principal accused Balraje, there is enough material on record to show their complicity. No case is made out for enlarging the said four Applicants in first two Applications on bail. I am informed that the case is already committed to the Court of Sessions. Considering the young age of the main accused, direction will have to be given for expeditious trial of the case.

23. The Applicants in Criminal Application No.4509 of 2005 are obviously entitled to be enlarged on bail as there is hardly any material available against them.

24. Hence, I pass the following order:

: O R D E R :

CRIMINAL APPLICATION NO.4509 OF 2005

i) Criminal Application No.4509 of 2005 is allowed.

ii) The Applicants Bapu Chandu Ugade and Maruti Tukaram Ugade shall be enlarged on bail in connection with **C.R.No. 95 of 2005 of Mohol Police Station,** subject to furnishing a personal bond of **Rs.15,000/-** each with one or two local sureties in the like amount.

iii) The Bail is granted subject to condition that the said Applicants in Criminal Application No.4509 of 2005 will report to the concerned Police Station once in a week till the conclusion of trial.

iv) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

v) The Applicants shall co-operate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in above terms.

viii) The parties to act upon an authenticated copy of this order.

CRIMINAL APPLICATION NO.4507 OF 2005

CRIMINAL APPLICATION NO.4508 OF 2005

i) Criminal Application No.4507 of 2005 and Criminal Application No.4508 of 2005 are dismissed.

ii) If a Fast Track Court is available and is empowered to try the case, the learned Sessions Judge shall transfer the said case to a Fast Track Court. The trial should be concluded as expeditiously as possible by treating it as a High Court expediated cases and preferrably within a period of six months from today.

iii) Parties to act upon an authenticated copy of this order.

JUDGE